

1 Rose M. Zoia • sbn 134759  
2 Law Office of Rose M. Zoia  
3 50 Old Courthouse Square, Suite 401  
4 Santa Rosa CA 95404  
5 ph 707.526.5894  
6 fax 707.526.5895  
7 Attorneys for Plaintiff

8  
9 **UNITED STATES DISTRICT COURT FOR**  
10 **THE NORTHERN DISTRICT OF CALIFORNIA**

11  
12 ROHNERT PARK CITIZENS TO  
13 ENFORCE CEQA, and DOES 1 through 5,  
14 inclusive,

15 v. Plaintiff,

16 CALIFORNIA DEPARTMENT OF  
17 TRANSPORTATION, UNITED STATES  
18 DEPARTMENT OF TRANSPORTATION,  
19 FEDERAL HIGHWAY ADMINISTRATION,  
and DOES 6 through 10, inclusive,

20 Defendants.

CASE NUMBER C 07-04607 TEH

21 **JOINT CASE MANAGEMENT**  
**STATEMENT BETWEEN PLAINTIFF**  
**AND FEDERAL DEFENDANTS**  
**UNITED STATES DEPARTMENT OF**  
**TRANSPORTATION AND FEDERAL**  
**HIGHWAY ADMINISTRATION**

22 Date: December 10, 2007  
23 Time: 1:30 p.m.  
24 Ctrm: 12, 19<sup>th</sup> Fl, SF

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1 Plaintiff and Defendants United States Department of Transportation and  
2 Federal Highway Administration (“Federal Defendant”) submit this joint Case  
3 Management Statement pursuant to the Order Setting Intitial Case Management  
4 Conference and ADR Deadlines, and the Standing Order re Contents of Joint Case  
5 Management Statement.

6 **1. Jurisdiction and Service:** Plaintiff contends that this Court has  
7 jurisdiction pursuant to 28 U.S.C. § 1331 and 1361. This Court has pendent  
8 jurisdiction over the state California Environmental Quality Act (CEQA) and Public  
9 Records Act (PRA) claims joined with the federal NEPA claim. Venue is  
10 appropriate in the Northern District of California under 28 U.S.C. § 1391(e).  
11

12 The Federal Defendant states that this Court has jurisdiction pursuant to 28  
13 U.S.C. § 1331, but does not agree that it has jurisdiction under 28 U.S.C. § 1361.  
14 Further, the Office of the U.S. Attorney, Northern District of California and Federal  
15 Defendant have been served with process.

16 Plaintiff states that it obtained and filed an executed waiver of service from  
17 Defendant California Department of Transportation (Caltrans). The due date for  
18 Caltrans' response to the complaint is January 13, 2008.

19 **2. Facts:** Federal Defendant and the California Department of  
20 Transportation (CalTrans) proposed building the Wilfred Avenue Interchange  
21 Project in Rohnert Park, Sonoma County, California (the Project). The Project  
22 proposes to modify the interchange to connect Wilfred Avenue to Golf Corse Drive  
23 by an under-crossing and to widen and realign U.S. Route 101 for HOV lanes  
24  
25

1 from Rohnert Park Expressway Overcrossing to the Santa Rosa Avenue Over-  
2 crossing.  
3

4       Federal Defendant and Caltrans prepared and released a joint Negative  
5 Declaration/Initial Study (CEQA) Environmental Assessment, followed by a  
6 Finding of No Significant Impact (“FONSI”).  
7

8       Plaintiff contends that the environmental documents do not discuss the  
9 environmental impacts of a casino proposed in the vicinity of the Project.  
10

11       Also, Plaintiff further contends that Caltrans failed to produce all non-  
12 privileged documents in response to plaintiff’s California Public Records Act (PRA)  
13 request.  
14

### 15       **3. Legal Issues:**

16       Plaintiff contends that the legal issues are (1) whether an Environmental  
17 Impact Statement (“EIS”) is required for the Project pursuant to the National  
18 Environmental Policy Act (“NEPA”), (2) whether recirculation of the negative  
19 declaration is required pursuant to section 15088.5 of the CEQA Guidelines (14  
20 Cal. Code Regs.); and/or (3) whether subsequent or supplemental environmental  
21 review is required pursuant to section 15162 or section 15163 of the Guidelines;  
22 and (4) whether Caltrans violated the PRA by law by improperly and without  
23 justification withholding certain non-exempt and non-privileged public records from  
24 plaintiff and plaintiff’s members and representatives.  
25

26       The Federal Defendant contends that the legal issue is whether the  
27 preparation of an Environmental Impact Statement (“EIS”) is required for the  
28

1 Project, pursuant to the National Environmental Policy Act ("NEPA").

2       **4. Motions:** Plaintiff does not anticipate making any motions in this case  
3 other than, perhaps, a motion for summary judgment or, alternatively, an opening  
4 brief on the merits. Plaintiff's counsel has been informed that Caltrans anticipates  
5 bringing a Rule 12 motion.

6           The Federal Defendant states that the parties should stipulate to a  
7 proposed schedule for briefing and hearing of cross-motions for summary  
8 judgment and ask the Court to enter an order adopting that schedule.

9       **5. Amendment of Pleadings:** Plaintiff does not anticipate amending the  
10 complaint.

11       **6. Evidence Preservation:** Plaintiff contends that this is a mandamus case  
12 tried on the administrative record. Plaintiff elected to prepare the record under  
13 CEQA relative to the state law claim and can begin to do so with the documents  
14 received pursuant to its PRA request. Such record preparation should be  
15 coordinated with Federal Defendant so that duplication does not occur.

16           Federal Defendant states that all known documents related to the  
17 administrative record have been preserved and will be made available when the  
18 administrative record is prepared and produced. (Moved, only.)

19       **7. Disclosures:** This is an action for review of an administrative record and  
20 exempt from the rule for initial disclosures, pursuant to Rule 26(a)(1)(E),  
21 Fed.R.Civ.P.

1           **8. Discovery:** Discovery is neither necessary nor appropriate in this action  
2 for review of an administrative record.  
3

4           **9. Class Actions:** This case is not a class action.  
5

6           **10. Related Cases:** None.  
7

8           **11. Relief:** Plaintiff requests (1) a Peremptory Writ of Mandate ordering  
9 defendants to set aside their respective actions and any approvals in furtherance  
10 of the project and to comply with NEPA, the APA, CEQA, the PRA, and other  
11 applicable laws prior to further consideration the project; (2) declaratory relief  
12 against the DOT and the FHWA establishing that the FHWA must recirculate or  
13 prepare an EIS or a supplement to the FONSI pursuant to NEPA and the APA; (3)  
14 upon necessity and the filing of a request, that Court issue a temporary stay of  
15 the administrative approvals and/or a temporary restraining order and  
16 preliminary injunction; (4) a permanent injunction enjoining defendants from  
17 engaging in any activity connected with the approvals or the project unless and  
18 until this Court finds that the approvals are in full compliance with NEPA, the APA,  
19 CEQA, the PRA, and all other applicable laws; and (5) costs of suit and attorney's  
20 fees herein pursuant to section 1021.5 of the California Code of Civil Procedure  
21 and/or the Equal Access to Justice Act, 28 U.S.C. §§ 2412(b), (d), and/or section  
22 6259(d) of the California Government Code or pursuant to any other applicable  
23 law.  
24

25           Federal Defendant requests a judgment of dismissal and an award of costs.  
26  
27

1           **12. Settlement and ADR:** The state defendant and plaintiff are required to  
2 hold a settlement meeting under CEQA within 45 days of service of the complaint,  
3 i.e., December 29, 2007. Plaintiff proposes that Federal Defendant participate in  
4 that meeting. Federal Defendant does not know if settlement is possible but is not  
5 opposed to preliminary, exploratory settlement or ADR discussions.

6  
7           **13. Consent to Magistrate Judge For All Purposes:** Plaintiff consents to  
8 have a magistrate judge conduct all further proceedings including trial and entry of  
9 judgment.

10  
11          The United States respectfully declines to consent to magistrate judge for  
12 further proceedings.

13  
14          **14. Other References:** This case is not suitable for reference to binding  
15 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

16          **15. Narrowing of Issues:** The issues are not amenable to being narrowed  
17 by agreement or by motion. The evidence will be presented in the form of the  
18 administrative record contained in volumes, indexed, and paginated.

19  
20          **16. Expedited Schedule:** Plaintiff contends that this case can be handled  
21 on an expedited basis with streamlined procedures. Plaintiff proposes the  
22 following schedule:

23  
24          1/16        exchange of indices of proposed record documents  
25          1/23        copy of proposed record documents to Caltrans  
26          1/30        exchange of comments on proposed record  
27          2/6         agencies' certification and lodgment of record  
28          3/5         opening brief  
              4/2         opposition briefs  
              4/23        reply briefs

1                   Federal Defendant suggests that the parties enter into a stipulation and ask  
2 the Court to sign an order which sets a schedule for briefing and hearing of cross-  
3 motions for summary judgment, as follows:

4                   - Date for Plaintiff's motion for summary judgment  
5                   - Date for Federal Defendant's memorandum in opposition to Plaintiff's  
6                   motion for summary judgment and Federal Defendant's motion for summary  
7                   judgment.  
8                   - Date for Plaintiff's reply memorandum in support of its summary  
9                   judgement motion and memorandum in opposition to Federal Defendant's  
10                   motion for summary judgment.  
11                   - Date for Federal Defendant's reply memorandum in support of its motion.  
12                   - Date for Court's hearing on cross-motions for summary judgment.

13                   **17. Scheduling:** See item 16. Federal Defendant state that its proposed  
14 schedule for briefing cross motions for summary judgment should not commence  
15 until after its Administrative Record and the Administrative Record under CEQA  
16 have been prepared and made available to all parties. Federal Defendant  
17 estimates that its own Administrative Record will be completed and available not  
18 later than February 15, 2008.

19                   **18. Trial:** Trial is inappropriate and unnecessary in this record review case.  
20 The case should be handled on the briefs or motions for summary judgment  
21 based upon an agreed-upon schedule by the parties and the Court.  
22 Plaintiff states that the hearing before the Court, whether on briefs or summary  
23 judgment, is expected to last 2 hours or less.

**19. Disclosure of Non-party Interested Entities or Persons:** The parties have not filed the “Certification of Interested Entities or Persons.” Plaintiff here certifies that it knows of no persons, firms, partnerships, corporations (including parent corporations) or other entities to have either: (I) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.

Federal Defendant knows no such entities or persons.

**20. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.** Plaintiff refers the Court to item 16 above.

Federal Defendant knows of no such matters.

Dated: December 4, 2007 Law Office of Rose M. Zojas

/s/  
Rose M. Zoia, counsel for Plaintiff Rohnert Park Citizens to Enforce CEQA

SCOTT N. SCHOOLS  
United States Attorney

\_\_\_\_\_  
/s/ \_\_\_\_\_  
CHARLES M. O'CONNOR  
Assistant U.S. Attorney  
Counsel for Defendants United States  
Department of Transportation and Federal  
Highway Administration